

CONFIDENTIALITY AGREEMENT

(SBA Loan Sale #7)

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is made and agreed to by the undersigned ("Bidder").

WHEREAS, the United States Small Business Administration ("SBA") intends to offer for sale certain loans including certain related servicing rights, documents and instruments (each individually referred to herein as a "Loan" and collectively as the "Assets"); and

WHEREAS, Bidder will be provided with bid materials and access to the due diligence database containing documents, correspondence, third party reports, data and other information relating to the Assets for review and to permit Bidder to perform its own due diligence and investigation of the Assets; and

WHEREAS, in consideration of the SBA's furnishing Bidder with or providing Bidder with access to information regarding the Assets, Bidder desires to make certain agreements regarding such information and any other information the SBA, its agents or representatives furnish to Bidder or provide Bidder with access to regarding the Assets, together with all copies thereof and notes, analyses, compilations, studies and other documents, whether prepared by Bidder or others, which contain or otherwise reflect such information (such information, and such documents, are collectively herein referred to as the "Evaluation Materials"); and

WHEREAS, if Bidder wishes to access the Evaluation Materials via the internet, the SBA will provide Bidder a unique password ("Password").

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bidder agrees as follows:

Section 1. *Term.* This Agreement shall become effective as of the date on which it is executed by Bidder and shall terminate as to each Loan only upon consummation of a purchase and sale transaction relating to such Loan between the SBA and Bidder ("Transaction"). Notwithstanding the foregoing, any claim based on a breach of this Agreement by Bidder with respect to a Loan occurring prior to a Transaction shall survive the Transaction unless waived by the SBA in writing.

Section 2. *Limitation on Use.* Bidder shall use the Password and the Evaluation Materials solely for the purpose of evaluating, negotiating and implementing a Transaction, and for no other purpose. Bidder's access to and review and inspection of the Evaluation Materials shall not be as an agent, representative or broker of any undisclosed party.

Section 3. *Limited Access; Confidentiality.* Without the prior, written consent of the SBA, to be granted or withheld in the SBA's sole discretion, Bidder shall not disseminate or

divulge the Password or any Evaluation Materials to any person or entity, other than to such persons who have a need for access to the Evaluation Materials for the purpose of assisting and advising Bidder in the evaluation, negotiation and implementation of the Transaction. Bidder shall ensure that all persons to whom it discloses the Password or Evaluation Materials shall keep the Password and Evaluation Materials confidential and otherwise comply with the terms of this Agreement. For purposes of this Agreement, the Evaluation Materials will not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by Bidder; (ii) was already in Bidder's possession prior to its receipt from the SBA; and (iii) becomes available to Bidder on a nonconfidential basis from a third party, other than the SBA, who, insofar as is known to Bidder is not prohibited from transmitting the information to Bidder by a contractual, legal or fiduciary obligation to the SBA.

Section 4. *Contacts.* Without the prior written consent of the SBA, which consent may be withheld in the SBA's sole discretion, Bidder shall not, directly or indirectly, contact, or seek or attempt to seek any information from, any person other than the SBA (and its agents and representatives named in the bid materials as the loan sale adviser and due diligence contractor assisting the SBA in connection with the Transaction) regarding the Assets or the Evaluation Materials. Without limiting the generality of the foregoing, Bidder shall not contact or attempt to contact any borrower, obligor, or guarantor under, or any participant lender or servicer of, any Loan or any of their respective officers, directors, employees, agents, representatives or attorneys. Nothing in this Section 4 shall prohibit Bidder from contracting with third parties to provide (i) title searches, (ii) broker price opinions, (iii) appraisals, (iv) real estate tax information, and (v) updated financial information on borrowers, obligors and guarantors.

Section 5. *Destruction/Return of Documents.* Unless otherwise directed by the SBA, within one week of the selection of winning bids, Bidder shall destroy, and shall ensure that all persons to whom it has disclosed the Evaluation Materials destroy, all copies, whether printed, digital, electronic or otherwise, of the Evaluation Materials relating to Assets not acquired by Bidder.

Section 6. *No Waiver of the SBA's Privileges or Immunities.* By providing Bidder with the Password and otherwise permitting Bidder access to the Evaluation Materials pursuant to this Agreement, the SBA does not intend to and shall not be deemed to have waived its individual attorney-client privilege or work-product doctrine or any other privilege or immunity that may be applicable to the Evaluation Materials.

Section 7. *Other Disclosure.* To the extent that Bidder is required to disclose the Password or Evaluation Materials pursuant to the requirements of any legal proceeding, Bidder shall notify the SBA within one (1) business day of its knowledge of such legally required disclosure so that the SBA may seek an appropriate protective order and/or waive Bidder's compliance with this Agreement. Notice shall be both by telephone and in writing. In the absence of a protective order or waiver, Bidder may disclose the Password or relevant Evaluation Materials if, in the written opinion of its counsel, failure to disclose such Password or Evaluation

Materials in any tribunal would subject Bidder to liability for contempt, censure or other legal penalty or liability.

Section 8. *Liability.* If the SBA determines that Bidder has breached any provision of this Agreement, the SBA may, in its sole discretion, exercise any or all legal or equitable rights or remedies to which the SBA is entitled on account of Bidder's breach, including the right to refuse to accept any bid made by or on behalf of the Bidder or to allow a Bidder in breach of this Agreement to conduct due diligence on any other loans offered for sale by the SBA in subsequent asset sales. The SBA shall not be deemed to have waived any of its rights or remedies on account of its failure, delay or forbearance in exercising any such right or remedy in a particular instance. Bidder will inform the SBA immediately of any improper disclosure of the Password or any of the Evaluation Materials, and of any breach of any provision of this Agreement, which may come to Bidder's attention. Bidder acknowledges that any unauthorized use of the Evaluation Materials may result in the imposition of criminal penalties under 18 U.S.C. Section 641.

Section 9. *Indemnification.* Bidder shall indemnify the SBA, its employees, representatives, agents and contractors ("Indemnified Parties") and hold such Indemnified Parties harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) asserted against or incurred by the SBA as a result of any violation of, or failure to comply with, the provisions of this Agreement by Bidder or any person to whom it has disclosed the Password or Evaluation Materials.

Section 10. *Release of the SBA.* Bidder acknowledges and understands that some or all of the Evaluation Materials may have been prepared by parties other than the SBA, that the SBA has not independently verified the Evaluation Materials, and that, except as may be contained in any loan sale agreement executed by the SBA and Bidder in connection with the Transaction, neither the SBA, its employees, representatives, agents or contractors nor any other entity which provides Evaluation Materials to Bidder at the direction of the SBA, makes any representation or warranty whatsoever, express or implied, with respect to the content, completeness or accuracy of the Evaluation Materials. Bidder further acknowledges that the Evaluation Materials may not contain certain information deemed privileged by the SBA. Bidder hereby releases the SBA, its employees, representatives, agents and contractors, including the preparers of any of the Evaluation Materials, from all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees) asserted against or incurred by Bidder by reason of Bidder's reliance on or knowledge of the Evaluation Materials or by any other reason. This section shall survive the acquisition of any Assets by Bidder.

Section 11. *Governing Law.* This Agreement shall be construed, and the rights and obligations hereunder determined, in accordance with federal statute and federal common law ("Federal Law"). Insofar as there may be no Federal Law, the law of the State of New York shall be deemed reflective of Federal Law. Bidder hereby irrevocably and unconditionally consents to

submit to the exclusive jurisdiction of the courts of the United States of America located in Washington, D.C. in connection with suits or proceedings arising out of or relating to this Agreement and Bidder agrees not to commence any action, suit or proceeding relating thereto except in such courts. Bidder agrees that any service of any process, summons, notice or document by U.S. Postal Service registered mail to Bidder's address set forth below shall be effective service of process for any action, suit or proceeding brought against Bidder in any such court. Reviewer hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in the courts of the United States of America located in Washington, D.C. and hereby further irrevocably and unconditionally waives and agrees not to plead or claim that any action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 12. *Miscellaneous.* This Agreement represents the entire agreement between Bidder and the SBA relating to the use and disclosure of the Password and Evaluation Materials, and supersedes any and all prior understandings and agreements with respect thereto. This agreement may be amended only by written agreement of the SBA and Bidder. This Agreement shall apply to and be binding upon Bidder and its directors, officers, employees, agents, successors and assigns. The representative(s) signing this Agreement on behalf of Bidder represents that he or she is fully authorized to enter into this Agreement and to bind legally Bidder.

IN WITNESS WHEREOF, a duly authorized representative of Bidder has executed this Agreement as of the date set forth below.

BIDDER:

(Name of Bidder)

By: _____

Printed Name: _____

Title: _____

Email Address: _____

Date of Execution: _____